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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,083	04/30/2001	John Mantegna	06975-148001 / Processing	1607
26171	7590	10/13/2005		
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER LAZARO, DAVID R	
			ART UNIT 2155	PAPER NUMBER
DATE MAILED: 10/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/845,083

Applicant(s)

MANTEGNA ET AL.

Examiner

David Lazaro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-16, 18-26 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-16, 18-26 and 28-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

1. This office action is in response to the amendment filed 09/19/05.
2. Claims 1, 8, 11, 18, 21 and 28 were amended.
3. Claims 7, 17 and 27 were canceled.
4. Claims 1-6, 8-16, 18-26 and 28-30 are pending in this office action.

Response to Amendment/Arguments

5. The examiner acknowledges the amendment was directed based on the previous examiner's indication of allowability in regards to claims 7-10, 17-29 and 27-30.

However, the examiner is obligated to present a rejection based on newly found art. As such, the examiner withdraws the finality of the previous action. The rejection of claims 1-6, 11-16, and 21-26 under 35 U.S.C. §102(b) as being anticipated by Ward (EP 0921666A2) is also withdrawn.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

7. Claims 1-3, 5, 6, 8-13, 15, 16, 18-23, 25, 26, 28-30 are rejected under 35 U.S.C. 102(a) as being anticipated by "Skew detection and compensation for Internet

audio applications” by Hodson et al., ICME 2000, July 2000, Vol. 3 (hereinafter Hodson).

8. With respect to Claims 1, 11 and 21, Hodson teaches a method and corresponding computer program and computer system for dynamic latency management in a real-time electronic communication comprising:

measuring a communication delay arising from a receiving data buffer (Page 1, section 2 and see Fig. 1 - skew detection is a measurement of communication delay and associated with a receiving buffer) ;

determining a latency adjustment necessary to adjust the size of the communication delay to within a predetermined range (Page 2, last paragraph of section 2 and first paragraph of section 3 - adjustments made based on a compensation algorithm with the goal to maintain the buffer occupancy within a constrained region);

determining an optimal range for a size of the communication delay based on the measured communication delay (Page 2, last paragraph of section 2 and first paragraph of section 3 - the goal is to maintain the buffer occupancy within a constrained region);
and

modifying a number of samples of a playback data block passing through the receiving data buffer based on the latency adjustment necessary to adjust the size of the communication delay and on the optimal range for the size of the communication delays (Page 2, section 3 - adjustments made based on a compensation algorithm with the goal to maintain the buffer occupancy within a constrained region, this includes modification of samples in the form of cutting or repeating particular samples);

wherein modifying the number of samples further comprises performing heuristic resampling of a playback block (Page 2, section 3, particularly the second paragraph under section 3 - the modifications are performed using heuristic resampling).

9. With respect to Claims 2, 12 and 22, Hodson teaches all the limitations of Claim 1, 11 and 21 respectively, wherein the number of samples is modified without introduction audible artifacts (Page 2, section 3, first paragraph and section 4, first paragraph).

10. With respect to Claims 3, 13 and 23, Hodson teaches all the limitations of Claim 1, 11 and 21 respectively, wherein measuring the communication delay comprises measuring an instantaneous communication delay associated with the receiving data buffer (Page 1, section 2 and see Fig. 1).

11. With respect to Claims 5, 15 and 25, Hodson teaches all the limitations of Claim 1, 11 and 21 respectively, wherein the real-time electronic communication includes an audio communication (Page 1, abstract).

12. With respect to Claims 6, 16, and 26, Hodson teaches all the limitations of Claim 1, 11 and 21 respectively, further comprising determining receiving buffer delay upper and lower bounds (Pages 1-2, Section 2).

13. With respect to Claims 8, 18 and 28, Hodson teaches all the limitations of Claim 1, 11 and 21 respectively, wherein performing heuristic resampling comprises: analyzing multiple consecutive samples of audio data in the playback block; identifying consecutive samples with minimal variation in a parameter of their data; and adjusting the number of samples in the identified consecutive samples (Page 2, section 3).

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14. With respect to Claims 9, 19 and 29, Hodson teaches all the limitations of Claim 8, 18 and 28 respectively, wherein adjusting the number of samples comprises removing a sample from the identified consecutive samples (Page 2, section 3).

15. With respect to Claims 10, 20 and 30, Hodson teaches all the limitations of Claim 8, 18 and 28 respectively, wherein adjusting the number of samples comprises adding a sample from the identified consecutive samples (Page 2, section 3).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 4, 14, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodson in view of Examiner's official notice.

18. With respect to Claims 4, 14 and 24, Hodson teaches all the limitations of Claims 1, 11 and 21 respectively, and further teaches measuring the instantaneous communication delay associated with the receiving data buffer two or more times (Page 1, section 2, paragraph 2 - running estimate).

Hodson does not explicitly disclose averaging the measurements. However, the examiner takes official notice that averaging of measurements is well known in the art.

As such, It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Hodson and modify them such that

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they further comprise averaging the measurements. One would be motivated to have this, as it is well known in the art.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lazaro whose telephone number is 571-272-3986. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David Lazaro
October 11, 2005


SALEH NAJJAR
SUPERVISORY PATENT EXAMINER